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| 10/800,674 | 03/16/2004 | Ferdinand Grogl | Q79685 | 3002 |
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| SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037 | | | MAYO III, WILLIAM H | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2831 | |

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/800,674

Applicant(s)

GROGL ET AL.

Examiner

William H. Mayo III

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-5, 8-9, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (EP Pat Num 0 790 624 A2) in view of Andrieu et al (Pat Num 5,300,337, herein referred to as Andrieu). Smith discloses an abrasion resistant jacket (Figs 1-4) for a flexible cable (10) comprising a core (12) and a jacket (16, 18, 20) made of an abrasion resistant thermoplastic material (Col 4, lines 15-23) that surrounds the core (12). Specifically, with respect to claim 1, Smith discloses that the jacket (16 & 20) is made of an inner jacket layer (16) that is capable of being extruded and an outer jacket

layer (20) capable of being pressure extruded, wherein a layer of monofilaments (18) of a chemical and thermally stable material (Cols 5 & 6, lines 53-58 & 1-7) is placed between the inner jacket layer (16) and the outer jacket layer (20) and has a visual coverage of 40-70% (i.e. less than 60%, Col 6, lines 28-32), wherein the outer jacket (20) is placed such that the spaces in the layer of monofilaments (18) are nearly filled by the material of the outer jacket layer (20) and the layer of monofilaments adheres to the inner sheath layer (16, Col 7, lines 35-41). With respect to claim 2, Smith discloses that the layer (18) may comprise a braid of monofilaments (Col 6, lines 16-22). With respect to claim 3, Smith discloses that the layer (18) comprises at least one layer of monofilaments (Col 6, lines 16-22) stranded over the cable core (12). With respect to claim 4, Smith discloses that the layer of monofilaments (18) may be made of polyamide (Col 5, lines 52-58). With respect to claim 5, Smith discloses that the layer of monofilaments (18) may be polyethersulfone (Col 5, lines 52-58). With respect to claim 8, Smith discloses that the core (12) may comprise a plurality of wires, wherein the wires are embedded in an inner sheath (i.e. insulated conductors, Cols 3 & 4, lines 52-58 & 1-5). With respect to claim 9, Smith discloses that the coverage of the layer of monofilaments (18) may be between 50-65% (i.e. less than 60%, Col 6, lines 28-32). With respect to claim 11, Smith discloses that the jacket (20) may be made of polyurethane (Col 6, lines 39-42).

Smith doesn't necessarily disclose the monofilaments being between 0.15-0.25 mm (claim 1).

Andrieu teaches an abrasion resistant jacket (Figs 1-4), that may be utilized with a cable (Fig 4) and provides protection from the effects of abrasion or heat as well as to maintain the elongated articles such as a cable in a neatly bundled arrangement so that they are not damaged by moving machinery parts or the like (Col 1, lines 10-20).

Specifically, with respect to claim 1, Andrieu discloses a jacket (10) comprising a layer of monofilaments (11), wherein the diameter of the monofilaments (11) is typically in the range 0.15-0.25 mm (i.e. 8-15 mils is equal to 0.203-0.381 mm, Col 3, lines 50-51).

With respect to claim 1, it would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to modify the resistant jacket of Smith to comprise the monofilaments being between 0.15-0.25 mm as taught by Andrieu because Andrieu teaches that such a configuration provides protection from the effects of abrasion or heat as well as to maintain the elongated articles such as a cable in a neatly bundled arrangement so that they are not damaged by moving machinery parts or the like (Col 1, lines 10-20) and since such a modification would have involved a mere change in size of a component and a change of size is generally recognized as being within the ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

4. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (EP Pat Num 0 790 624 A2) in view of Andrieu (Pat Num 5,300,337, herein referred to as modified Smith), as applied to claim 1 above, further in view of Urabe et al (Pat Num 2004/0076824 A1, herein referred to as Urabe). Modified Smith discloses an abrasion resistant jacket (Figs 1-4) for a flexible cable (10) comprising a core (12) and a jacket

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(16, 18, 20) made of an abrasion resistant thermoplastic material (Col 4, lines 15-23) that surrounds the core (12) as disclosed above with reference to claim 1.

Modified Smith doesn't necessarily disclose the monofilaments being containing a fireproofing agent (claim 12).

Urabe teaches flame retardant polyamide filaments being monofilaments are known and have been used to impart flame retardancy to a variety of items (paragraphs 2 & 4), such as an electrical cable (Paragraph 11). Specifically, with respect to claim 12, Urabe teaches that monofilaments containing fireproofing agents are known and are commonly utilized in environments where fire resistant properties are desired, such as electrical cables (Paragraph 11).

With respect to claim 12, it would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to modify the protective jacket of Smith to comprise the monofilaments to be fire resistant as taught by Urabe because Urabe teaches that such monofilaments containing fireproofing agents are known and are commonly utilized in environments where fire resistant properties are desired, such as electrical cables (Paragraph 11) and since it has been held to be within general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416..

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (EP Pat Num 0 790 624 A2) in view of Andrieu (Pat Num 5,300,337, herein referred to as modified Smith), as applied to claim 1 above, further in view of Middleton et al (Pat Num 1,698,704, herein referred to as Middleton). Modified Smith discloses an abrasion

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resistant jacket (Figs 1-4) for a flexible cable (10) comprising a core (12) and a jacket (16, 18, 20) made of an abrasion resistant thermoplastic material (Col 4, lines 15-23) that surrounds the core (12) as disclosed above with reference to claim 1.

However, modified Smith doesn't necessarily teach a cable comprising a metal braided shield, wherein a separation layer of non-woven material or plastic foil is placed between the braided shield and the layer of monofilaments (claim 6).

Middleton teaches an abrasion resistant jacket (Figs 1-3) for a flexible cable (Fig 1) comprising a core (1-3) and a jacket (8 & 9) made of an abrasion resistant thermoplastic material (Page 3, lines 43-63) that surrounds the core (1-3), which further comprises a metal braided shield for the purpose of preventing passage of electrostatic stress and providing desired flexibility to the cable (Page 3, lines 16-24). Specifically, with respect to claim 6, Middleton teaches that the jacket (8 & 9) is made of an inner jacket layer (6) that is capable of being extruded and an outer jacket layer (9) capable of being pressure extruded, wherein a layer of monofilaments (7) of a chemical and thermally stable material (Page 3, lines 89-95) is placed between the inner jacket layer (8) and the outer jacket layer (9), wherein the outer jacket (9) is placed such that the spaces in the layer of monofilaments (7) are nearly filled by the material of the outer jacket layer (9) and the layer of monofilaments adheres to the inner sheath layer (6, Page 3, lines 43-59), wherein the cable (Fig 1) further comprises a metal braided shield (5), wherein a separation layer (6) of non-woven material or a plastic foil is placed between the braided shield (5) and the layer of monofilaments (7, Fig 1).

With respect to claim 6, it would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to modify the cable of modified Smith to comprise a metal braided shield, wherein a separation layer of non woven material or plastic foil is placed between the braided shield and the layer of monofilaments as taught by Middleton because Middleton teaches that such a configuration prevents passage of electrostatic stress and provides desired flexibility to the cable (Page 3, lines 16-24).

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (EP Pat Num 0 790 624 A2) in view of Andrieu (Pat Num 5,300,337) and Middleton (Pat Num 1,698,704, herein referred to as Modified Smith2), as applied to claim 6 above, further in view of Jachimowicz (Pat Num 3,711,621). Modified Smith discloses an abrasion resistant jacket (Figs 1-4) for a flexible cable (10) comprising a core (12) and a jacket (16, 18, 20) made of an abrasion resistant thermoplastic material (Col 4, lines 15-23) that surrounds the core (12) as disclosed above with reference to claim 6.

However, modified Smith2 doesn't specifically disclose the plastic layer comprising a powder that swells in the presence of moisture (claim 7).

Jachimowicz teaches an improved cable construction for preventing migration of water along the length of the cable (Figs 1-5) in the event that the jacket layer is ruptured (Col 1, lines 55-65). Specifically, Jachmiowicz teaches a cable (Fig 1) comprising a core (10) surrounded by an inner sheath (14) and an outer sheath (24), wherein a dry powder (30) which are known in the art (Cols 3-4, lines 64-68 & 1-15), may be placed in various areas of the cable (Fig 1) to prevent the migration of water,

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wherein the dry powder (30) swells in the presence of moisture (Cols 3-4, lines 64-68 & 1-15).

With respect to claim 7, it would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to modify the jacket of modified Smith2 to comprise the plastic foil layer having a powder that swells in the presence of water configuration as taught by Jachimowicz because Jachimowicz teaches that such a configuration is known in the art of cables for being an improved cable construction for preventing migration of water along the length of the cable (Figs 1-5) in the event that the jacket layer is ruptured (Col 1, lines 55-65) and since it has been held to be within general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Response to Arguments

7. Applicant's arguments filed September 2, 2005 have been fully considered but they are not persuasive. The applicant argues the following:

- A) Smith is not trying to provide an abrasion resistant sheath as claimed and therefore cannot anticipate the claimed invention.
- B) Smith discloses strength members which are not filaments but rather fibrous elements which would be much smaller and therefore differs from the claimed invention.
- C) Andrieu teaches the use of a woven fabric of monofilament warps and strands for the purpose of bundling items and doesn't contemplate a

structure covered with a pressure-extruded plastic that substantially fills in the spaces in the woven sleeve.

- D) One of ordinary skill in the art on reading the two references would not be led to modify Smith with the filaments of Andrieu because such a modification would defeat the purpose of Andrieu.

With respect to argument A, the examiner respectfully traverses. While the Smith reference may be silent with respect to the characteristic of being abrasion resistant, clearly Smith processes the same characteristic as the claimed invention since the modified Smith discloses all of the claimed structure. It has been held that where all claimed structure is disclosed by the prior art, that the prior art must inherently disclose the claimed characteristic also. Specifically, MPEP Section 2114 discloses:

2112.01 [R-2] Composition, Product, and Apparatus Claims

>I. < PRODUCT AND APPARATUS CLAIMS — WHEN THE STRUCTURE RECITED IN THE REFERENCE IS SUBSTANTIALLY IDENTICAL TO THAT OF THE CLAIMS, CLAIMED PROPERTIES OR FUNCTIONS ARE PRESUMED TO BE INHERENT

Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a prima facie case of either anticipation or obviousness has been established. In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." In re Spada, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). Therefore, the prima facie case can be rebutted by evidence showing that the prior art products do not necessarily possess the characteristics of the claimed product. In re Best, 562 F.2d at 1255, 195

USPQ at 433. See also *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985) (Claims were directed to a titanium alloy containing 0.2-0.4% Mo and 0.6-0.9% Ni having corrosion resistance. A Russian article disclosed a titanium alloy containing 0.25% Mo and 0.75% Ni but was silent as to corrosion resistance. The Federal Circuit held that the claim was anticipated because the percentages of Mo and Ni were squarely within the claimed ranges. The court went on to say that it was immaterial what properties the alloys had or who discovered the properties because the composition is the same and thus must necessarily exhibit the properties.).

See also *In re Ludtke*, 441 F.2d 660, 169 USPQ 563 (CCPA 1971) (Claim 1 was directed to a parachute canopy having concentric circumferential panels radially separated from each other by radially extending tie lines. The panels were separated "such that the critical velocity of each successively larger panel will be less than the critical velocity of the previous panel, whereby said parachute will sequentially open and thus gradually decelerate." The court found that the claim was anticipated by Menget. Menget taught a parachute having three circumferential panels separated by tie lines. The court upheld the rejection finding that applicant had failed to show that Menget did not possess the functional characteristics of the claims.); *Northam Warren Corp. v. D. F. Newfield Co.*, 7 F. Supp. 773, 22 USPQ 313 (E.D.N.Y. 1934) (A patent to a pencil for cleaning fingernails was held invalid because a pencil of the same structure for writing was found in the prior art.).

In light of the above statement, it is respectfully submitted that the jacket of modified Smith must inherently have the characteristic of being abrasion resistant, since modified Smith discloses all of the claimed structure of the claimed invention.

With respect to argument B, the examiner respectfully traverses. It is unclear how the applicant can state that Smith doesn't disclose filaments, when Smith states in Column 4, lines 25-29,

"As best seen by reference to Fig 2, the strength member array 18 is comprised of a synthetic fibrous strength members 21, which are defined by filaments 22"

Clearly as disclose by Smith, the strength member array is made of filaments. Smith goes on to state in Column 6, lines 1-15,

"...fibrous material may be a shoe fiber, **as well as continuous filament yarn**, and has a relatively high tensile strength. Re properties of this fibrous material are reported the information Bulletin K-MAA revise July 1986. and entitled. *Properties and Uses of KEVLAR®29 and ' KEVLAR 49 In Electromechanical Cables and Fiber topics.* As should be understood. the number of filaments of the fibrous strength members constitute the denier of the strength member. (Denier is a measure of weight which can also be equated to the geometric size and strength of the member). A preferred denier for the fibrous strength members 21 may range within conventional sizes. or configured as required to meet specific needs and performance characteristics. A suitable denier ranges from about 200 to about 15,000.

It is well known in the art of cables, that KELVAR® provides superior abrasion resistant and therefore Smith while silent to abrasion resistant, inherently states such since the filaments can be made of KELVAR®. Secondly, the MPEP instructs the examiner, to view the drawings for what that illustrate to one of ordinary skill in the art. Specifically, MPEP 2125 states:

2125 Drawings as Prior Art

DRAWINGS CAN BE USED AS PRIOR ART

Drawings and pictures can anticipate claims if they clearly show the structure which is claimed. In re Mraz, 455 F.2d 1069, 173 USPQ 25 (CCPA 1972). However, the picture must show all the claimed structural features and how they are put together.

Jockmus v. Leviton, 28 F.2d 812 (2d Cir. 1928). The origin of the drawing is immaterial. For instance, drawings in a design patent can anticipate or make obvious the

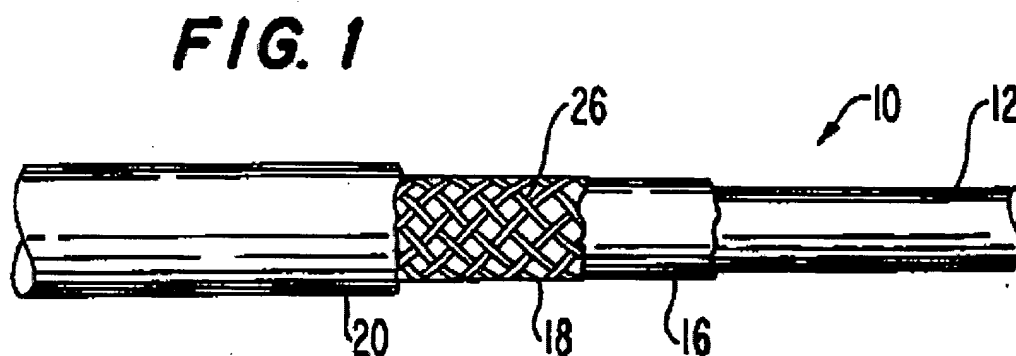
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claimed invention as can drawings in utility patents. When the reference is a utility patent, it does not matter that the feature shown is unintended or unexplained in the specification.

The drawings must be evaluated for what they reasonably disclose and suggest to one of ordinary skill in the art. In re Aslanian, 590 F.2d 911, 200 USPQ 500 (CCPA 1979).

See MPEP § 2121.04 for more information on prior art drawings as "enabled disclosures."

Based on the above guideline, and viewing the illustration of Smith's Figure 1 below, Smith clearly illustrates and states that the strength member array is made of filaments.



With respect to argument C, the examiner respectfully traverses. Firstly, it must be stated that Smith discloses all of the claimed elements except the monofilaments of the strength members comprising a diameter of 0.15-0.25 mm. Andrieu is disclosed for the sole teaching of monofilaments utilized as cable covering for providing protection from the effects of abrasion or heat as well as to maintain the elongated articles such as a cable in a neatly bundled arrangement so that they are not damaged by moving machinery parts or the like (Col 1, lines 10-20), wherein the monofilaments have a

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diameter between 0.15-0.25 mm. The fact that Andrieu isn't concern with a structure covered with a pressure-extruded plastic that substantially files in the spaces in the woven sleeve, doesn't negate the teaching of strength members for usage with cables having monofilaments comprising a diameter of 0.15-.025 mm. Based on the teaching of Andrieu, it would have been obvious to one of ordinary skill in the art to modify the monofilaments being between 0.15-0.25 mm as taught by Andrieu because Andrieu teaches that such a configuration provides protection from the effects of abrasion or heat as well as to maintain the elongated articles such as a cable in a neatly bundled arrangement so that they are not damaged by moving machinery parts or the like (Col 1, lines 10-20) . Secondly, it must be stated also that such a modification would have involved a mere change in size of a component and a change of size is generally recognized as being within the ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). The courts have been consistent that where the difference between the prior art and the claimed invention are relative dimensions, the claimed device was not patentably distinct from the prior art device. Specifically, the MPEP 2144 discloses that

IV. CHANGES IN SIZE, SHAPE, OR SEQUENCE OF ADDING INGREDIENTS

A. Changes in Size/Proportion

In re Rose , 220 F.2d 459, 105 USPQ 237 (CCPA 1955) (Claims directed to a lumber package "of appreciable size and weight requiring handling by a lift truck" where held unpatentable over prior art lumber packages which could be lifted by hand because limitations relating to the size of the package were not sufficient to patentably distinguish over the prior art.); *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976)

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("mere scaling up of a prior art process capable of being scaled up, if such were the case, would not establish patentability in a claim to an old process so scaled." 531 F.2d at 1053, 189 USPQ at 148.).

In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

In view of the above statement, it would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to modify the resistant jacket of Smith to comprise the monofilaments being between 0.15-0.25 mm as taught by Andrieu because Andrieu teaches that such a configuration provides protection from the effects of abrasion or heat as well as to maintain the elongated articles such as a cable in a neatly bundled arrangement so that they are not damaged by moving machinery parts or the like (Col 1, lines 10-20) and since such a modification would have involved a mere change in size of a component and a change of size is generally recognized as being within the ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

With respect to argument D, the examiner respectfully traverses. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves

or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Andrieu teaches an abrasion resistant jacket (Figs 1-4), that may be utilized with a cable (Fig 4) and provides protection from the effects of abrasion or heat as well as to maintain the elongated articles such as a cable in a neatly bundled arrangement so that they are not damaged by moving machinery parts or the like (Col 1, lines 10-20). Specifically, with respect to claim 1, Andrieu discloses a jacket (10) comprising a layer of monofilaments (11), wherein the diameter of the monofilaments (11) is typically in the range 0.15-0.25 mm (i.e. 8-15 mils is equal to 0.203-0.381 mm, Col 3, lines 50-51). Smith clearly teaches utilizing a cable comprising abrasion resistant jacket having a strength member wherein the strength member comprises filaments having a diameter. While Smith is silent to the actual diameter of the filaments, clearly the strength member of Smith is capable of performing equally well with the modification of the filaments being between 0.15-0.25 mm. Therefore, as stated above with respect to argument C, it would have been obvious to modify the resistant jacket of Smith to comprise the monofilaments being between 0.15-0.25 mm as taught by Andrieu because Andrieu teaches that such a configuration provides protection from the effects of abrasion or heat as well as to maintain the elongated articles such as a cable in a neatly bundled arrangement so that they are not damaged by moving machinery parts or the like (Col 1, lines 10-20).

Based on the rebuttals presented above, the examiner respectfully submits that the 35 USC 103(a) rejections above, are proper and just.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Communication

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Mayo III whose telephone number is (571)-272-1978. The examiner can normally be reached on M-F 8:30am-6:00 pm (alternate Fridays off).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard can be reached on (571) 272-2800 ext 31. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William H. Mayo III
Primary Examiner
Art Unit 2831

WHM III
October 26, 2005